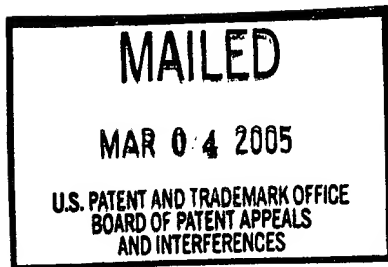


The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte MICHEL LE HIR
and
ALAIN JEUSSET



Appeal No. 2005-0618
Application No. 09/760,017

ON BRIEF

Before COHEN, McQUADE, and NASE, Administrative Patent Judges.
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1, 4, 5 and 8. Claims 2, 3, 6 and 7, which are all of the other claims pending in this application, have been withdrawn from consideration.

We REVERSE and REMAND.

BACKGROUND

The appellants' invention relates to a motorized reduction gear intended for functional equipment of a vehicle, such as a window lifter, sunroof, etc. (specification, p. 1). A copy of the claims under appeal is set forth in the appendix to the appellants' brief.

The prior art reference of record relied upon by the examiner in rejecting the appealed claims is:

Schechinger et al.
(Schechinger)

FR 2 663 798 - A1¹

Dec. 27, 1991

Claims 1, 4, 5 and 8 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Schechinger.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejection, we make reference to the answer (mailed August 7, 2003) for the examiner's complete reasoning in support of the

¹ In determining the teachings of Schechinger, we will rely on the translation of record provided by the USPTO.

rejection, and to the brief (filed May 22, 2003) and reply brief (filed October 7, 2003) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art reference to Schechinger, and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations which follow.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Verdegaal Bros. Inc. v. Union Oil Co., 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir.), cert. denied, 484 U.S. 827 (1987). The inquiry as to whether a reference anticipates a claim must focus on what subject matter is encompassed by the claim and what subject matter is described by the reference. As set forth by the court in Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984), it is only necessary for the claims to "'read on' something disclosed in the reference, i.e., all limitations of the claim are found in the reference, or 'fully met' by it."

Claim 1, the only independent claim on appeal, reads as follows:

A motorized reduction gear comprising:
a rotor provided with a rotor shaft bearing a commutator including a body having an inner surface mounted on said shaft and an opposing outer surface, and a reduction gearbox containing a gearwheel engaged with a worm of said shaft, and a magnetic ring mounted on said shaft in order that a number of rotations of said shaft can be counted, and wherein said magnetic ring is attached on said outer surface of said body of said commutator.

Schechinger's invention is directed to an electromotive drive device, in particular for a motor vehicle, with a commutator motor and a drive shaft, with which at least one Hall sensor and a magnet wheel arranged on the drive shaft cooperate in order to detect the speed and direction of rotation. Figure 1 shows electromotive drive 10 having a stator housing 12, at least one permanent magnet 13 and drive shaft 14. Shaft 14 carries a commutator 15 and an armature 16, which can turn in the magnetic field of permanent magnet 13. Brush contacts 17 slide against commutator 15 by which means a current flows in the direction of the winding. A pulse output device 30 is attached to the drive shaft 14 between commutator 15 and structure 20, and is actively connected to a Hall switch 31. Hall switch 31 is connected to structure 20 by means of support 32. Pulse output device 30 consists of spacing bushing 33, which is rigidly attached to drive shaft 14 and magnet wheel 34 fitted on spacing bushing 33 by clamping or adhesion. Spacing bushing 33 operates as a short-circuit ring for the magnetic circuit, which is used to amplify the magnetic field. Figure 2 of Schechinger

illustrates a modification of the electromotive drive 10 in which the magnet wheel 34a mounted on spacing bushing 33 is pressed against commutator 15 by means of a safety ring 40 mounted on drive shaft 14.

The appellants argue (brief, pp. 3-5; reply brief, p. 2) that Schechinger does not disclose a commutator having a magnetic ring attached to an outer surface of the commutator, the outer surface being opposite to the inner surface of the commutator that is mounted on the shaft as recited in claim 1. The appellants point out that Figure 2 of Schechinger does not disclose that the magnetic wheel 34a is attached on an outer surface of a commutator 15 as required by claim 1. In Schechinger, the inner surface of the commutator 15 is mounted on the shaft 14, and nothing is illustrated or described as being attached to the opposing outer surface of the commutator 15. The magnetic wheel 34a of Schechinger is not attached on the outer surface of the commutator 15, nor does the magnetic ring 34a even contact the outer surface of the commutator 15. Rather, the magnetic wheel 34a is pressed against a side of the commutator 15, so that the commutator 15 can act as a stop.

The examiner's response to this argument (answer, p. 5) is that claim 1 does not structurally define the body of the commutator as a single, unitarily formed body. Therefore, the claimed commutator is readable on a commutator unit formed by

Schechinger's commutator 15, spacing bushing 33 and the safety ring 40 taken together. As such, the outer surface of the spacing bushing 33, on which the magnetic wheel 34a is attached, is an outer surface of the commutator unit.

It is our opinion, that a person of ordinary skill in the art would not consider Schechinger's spacing bushing 33 to be a part of a commutator. In our view, the examiner's interpretation as to the scope of the term "commutator" set forth in the answer is not reasonable. The United States Patent and Trademark Office (USPTO) applies to the verbiage of the claims before it the broadest **reasonable** meaning of the words in their ordinary usage **as they would be understood by one of ordinary skill in the art**, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the appellants' specification. See In re Morris, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997) and In re Sneed, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983). Thus, Schechinger does not disclose a commutator having a magnetic ring attached to an outer surface of the commutator, the outer surface being opposite to the inner surface of the commutator that is mounted on the shaft as recited in claim 1.

For the reasons set forth above, the decision of the examiner to reject claim 1, and claims 4, 5 and 8 dependent thereon, under 35 U.S.C. § 102(b) is reversed.

REMAND

On page 6 of the answer, the examiner refers to Japanese reference 11-308812 and German reference 198 11 424 (both of record) that have not been applied in the rejection under appeal. These references have been given no consideration. See Ex parte Raske, 28 USPQ2d 1304, 1305 (Bd. Pat. App. & Int. 1993). However, since the examiner noted that a magnet mounted on the outer surface of a commutator is shown in both references, we remand this application to the examiner to consider if the pending claims are patentable over each of these references alone or in combination with other prior art.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1, 4, 5 and 8 under 35 U.S.C. § 102(b) is reversed.

REVERSED; REMANDED



IRWIN CHARLES COHEN
Administrative Patent Judge



JOHN P. McQUADE
Administrative Patent Judge



JEFFREY V. NASE
Administrative Patent Judge

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